



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

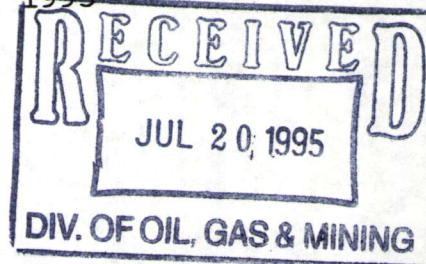
Vernal District Office  
170 South 500 East  
Vernal, Utah 84078-2799

July 17, 1995

*5/047/048*  
*Waye*  
*RELATED TO*  
*SNOW BEN 142*

IN REPLY REFER TO:  
3809.3-2  
UTU-66355  
UT08438

CERTIFIED MAIL  
Return Receipt Requested  
Z 413 579 755



### DECISION

Mr. Leo Snow  
P.O. Box 51  
Jensen, UT 84035

: 43 CFR 3809 Establishment and Duration  
: of Record of Noncompliance; A Bond and  
: A Plan of Operations Are Required

and

✓ Harold L. Bennett  
1025 Highway 65  
Austin, CO 81410

### Summary

Due to not completing your reclamation on unpatented mining claims, Sno-Ben #4 and #5, you have established a Record of Noncompliance. The duration of the Record of Noncompliance is three years. Both Messrs. Snow and Bennett are now required to furnish a plan of operations and a Surface Management personal or surety bond to cover the outstanding reclamation for these claims. The bond amount is \$1900.00 and it should be filed with the Mining Law Adjudicator, Bureau of Land Management, Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145-0155.

### Background

A mining notice was originally filed on February 9, 1987, by the operator, Searle Brothers Construction, Inc., of Evanston, Wyoming, for testing placer gravel deposits along the Green River. A field examination, conducted on April 10, 1987, revealed work in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 12, T5S, R23E, which was not accounted for in the mining notice. Upon departing from the site, Mr. Bennett was encountered. BLM requested a written mining notice during the ensuing discussion.



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The mining claims were encumbered by the National Wildlife Federation (NWF) preliminary injunction (February 17, 1986). Both Mr. Snow and Mr. Bennett were informed while at the Vernal District Office on April 10 of the NWF preliminary injunction. Under guidance given in Washington Office Instruction Memorandum No. 86-355, the District was unable to accept your mining notice. A decision dated April 24, 1987, from the Chief, Lands and Mining Claims, Adjudication Section, Utah State Office, declared Sno-Ben #4-6 null and void ab initio since these mining claims encompassed lands closed to location. Mr. Bennett's et al attorney filed an appeal of this decision and requested a stay during this appeal.

A meeting held on May 12, 1987, was documented by a letter from the Book Cliffs Resource Area Manager to Harold Bennett dated May 14, 1987. This letter summarized measures necessary to reclaim the existing disturbance on Sno-Ben #4 and 5. Mr. Snow and Mr. Bennett removed their equipment by June 8, 1987; however, trash, a barrel, metal scraps, and a water pit liner were left intact on the claims. A second letter requesting reclamation of these claims was sent on July 22, 1987, from the Vernal District Manager. Another letter was sent the same day from the Book Cliffs Resource Area Office listing concerns regarding standard operating practices of the mining operation on these claims. Some of these concerns were: (1) oversized, processed material being dumped downhill toward and into the Green River; (2) lack of any type of sediment ponds to filter sediments prior to returning the water used in the process back into the Green River; (3) not consulting with the BLM prior to constructing an access with a cut of greater than 3 feet; and (4) not stockpiling topsoil for later use in reclamation efforts.

On May 22, 1987, Mr. Bennett filed an appeal of the State Office's decision declaring the Sno-Ben #4-6 mining claims null and void. Mr. Tognoni, Mr. Bennett's et al attorney, filed a statement of reasons on August 25, 1987. On April 8, 1988, the Vernal District Manager sent Mr. Tognoni a letter requiring full reclamation of the site since interim reclamation measures were not accomplished during the time period specified. Mr. Tognoni filed an appeal of this decision to the Utah State Director. The State Director responded on June 30, 1988, modifying the April 8, 1988, decision to require only interim reclamation pending the outcome of the appeal to the Interior Board of Land Appeals. Mr. Bennett met with the Book Cliffs Resource Area personnel and indicated that the April 8, 1988, decision would not be appealed and interim reclamation work would be completed. Several phone calls, on-site meetings, and letters followed; but no reclamation work was ever completed.

On February 24, 1989, 107 IBLA 291 reversed BLM's decision declaring Sno-Ben #4-6 null and void. The IBLA ruled that a mining claim located the day before the effective date of the preliminary injunction is not null and void ab initio, since on the date of



location the lands were open to operation of the mining laws. During this appeal process, the mining claims were still subject to the annual assessment work requirement. No notice of intent to hold nor affidavit of assessment work was filed for assessment year 1988; therefore, these claims were declared abandoned and void by operation of law on June 15, 1989. A letter dated August 28, 1989, recapped a July 25, 1989, meeting with Mr. and Mrs. Snow. Minimum stabilization measures, equivalent to measures in the State Office letter of June 30, 1988, (minus the entrance gate) were to be completed if operations were not anticipated to commence before November 15, 1989. You were going to meet with Mr. LaStella to discuss options of submitting an amended notice to cover the disturbance on Sno-Ben #4 and 5. No interim reclamation measures of any kind were ever completed; therefore, a notice of noncompliance was issued on January 4, 1990. Since no action was taken to comply with the first notice of noncompliance, a second was issued on April 23, 1990. Messrs. Snow and Bennett were informed that they had established a record of noncompliance and any future mining activity on public lands administered by the Vernal District would require submission of a plan of operations for all mining activity in excess of casual use. It also notified them that if the required reclamation work was not completed by this new deadline, BLM would complete the work. Procedures would then be initiated against Mr. Snow and Mr. Bennett to recover the cost of completing outstanding reclamation work.

A letter dated July 24, 1990, addresses a conversation between you and Mr. Andrews, Book Cliffs Resource Area Manager. You indicated that since conditions were dry, the reclamation would be more effective if commenced during the fall. The Vernal District Manager agreed this was a prudent approach and altered his decision of April 23, 1990, to reflect completion of reclamation by November 1, 1990, or the alternatives in that decision would be enacted. A written reclamation plan was still required to be submitted within 30 days of receipt of this letter. A reclamation plan was never submitted. On November 3, 1990, Mr. Bennett had assigned all his interest in these claims to Overlook Gold Mining, with a stipulation that the assignee of these claims was responsible for all restoration work. A certified letter was sent to Mr. Bennett explaining his liability in this situation.

A field inspection by Richard Wilson on July 31, 1991, revealed that some of the required reclamation on Sno-Ben #4 and 5 had been completed. A modified decision dated April 13, 1992, was sent to Mr. Snow and Mr. Bennett. This decision ordered the completion of the outstanding reclamation work. The outstanding reclamation work yet to be completed consists of knocking down the highwall just east and north of the old settling pond, removing the liner from the old pond, and reseeding the area.



This project area has continued to be inspected twice a year, the latest inspection being 9/9/94. There have been no sign of any subsequent action being taken by Mr. Snow or Mr. Bennett to come into compliance, i.e., to finish reclaiming the area.

#### Establishment of Record of Noncompliance

Due to your failure to comply Messrs. Snow and Bennett have established a Record of Noncompliance. A record of noncompliance means that you will have to file a plan of operations and a 100-percent reclamation bond with the BLM for all mining activity in excess of casual use conducted on BLM administered lands Nationwide. (The Bureau has an automated system which identifies operators with records of noncompliance.) You have the right to appeal the establishment of the record of noncompliance and bond amount to the Utah State Director, Bureau of Land Management, in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed in writing at this office within 30 days after the date of this decision. This decision will remain in effect during appeal unless a written request for a stay is granted.

#### Duration of Record of Noncompliance

Since you have both have failed to fully reclaim the area disturbed by your operations under notice serialized as case UTU-66355 nor cooperated at all with the Resource Area, which has diligently tried to work with you to get reclamation completed, the Utah State Director has determined that the duration of your record of noncompliance will be 3 years. The duration of the record of noncompliance will not begin until all outstanding reclamation work required in the notice of noncompliance, dated April 13, 1992, (copy enclosed), has been satisfactorily completed and a bond posted for the unreclaimed disturbance. A surety or personal surface management bond in the amount of \$1900.00 must be furnished to the Mining Law Adjudicator, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, within 30 days of receipt of this letter. BLM surety and personal bond forms are enclosed for your use. If you have any questions about the type of bond being required, please contact Opolonia Abeyta at (801) 539-4123. Be sure to include your Notice serial number (U-66355) with any correspondence concerning the bond.

The decision regarding the duration of the record of noncompliance may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above

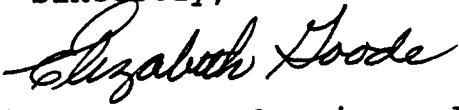
address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) [pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993)] for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413, copy enclosed) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on its merits,
- (3) The likelihood of immediate and irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Sincerely,

  
for Howard B. Cleavinger II

Vernal District Manager  
Acting

Enclosures:

Form 1842-1  
BLM Bond Forms  
43 CFR 4.413  
Notice of Noncompliance (4/13/92)

cc: ✓ UDOGM

Utah State Office (UT-921)



ash  
4/3/92  
N. Chang  
4-3-92

3809.3-2  
(UT08438)  
UMC 327440  
UMC 327441

CERTIFIED MAIL  
Return Receipt Requested  
P 755 884 242

APR 13 1992

D E C I S I O N

Mr. Leo Snow, et al  
P. O. Box 51  
Jensen, Utah 84035

:  
:  
:

Sno-Ben #4 and #5  
Placer Mining Claim  
Locations Operation

Notice of Noncompliance Modified

On 12/14/90 I issued a decision which declared that due to your failure to reclaim the disturbances on Sno-Ben #4 and #5 placer mining claim locations I would take measures to reclaim the disturbances, to prevent unnecessary and undue degradation, and would subsequently commence actions to recover costs for reclamation from yourself and Mr. Bennett. You appealed this decision to the Utah State Office, which upheld my decision. You then appealed to the IBLA. IBLA dismissed your appeal on 1/16/92 because a statement of reasons was never submitted.

During the intervening time you have commenced reclamation of the area. On 6/10/91 you were met onsite with Book Cliffs Resource Area Manager Paul M. Andrews and Geologist Richard S. Wilson. It was pointed out to you at that time what reclamation measures you would have to complete in order to satisfy compliance requirements. These included:

1. Remove the stock pile from the top of the hill lying between the road, the old settling pond, and the river.
2. Smooth off the banks or high walls of the "hill" as much as possible to more gentler slopes.
3. Construct three small dams. One in the gully just above the old settling pond, one in the westerly trending gully just east of the road and east of the "hill", and one in the northerly trending gully just south of the road and south of the "hill".
4. Knock down the high wall located just east and north of the old settling pond and remove the liner from the old settling pond.
5. Reseed as necessary.

**§4.413 Service of notice of appeal and of other documents.**

(a) The appellant shall serve a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor as identified in paragraph (c) of this section. Service must be accomplished in the manner prescribed in §4.401(c) of this title not later than 15 days after filing the document.

(b) Failure to serve within the time required will subject the appeal to summary dismissal as provided in §4.402 of this title.

(c)(1) If the appeal is taken from a decision of the Director, Minerals Management Service, or of the Director, Bureau of Land Management, the appellant will serve the Associate Solicitor, Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

(2) If the appeal is taken from a decision of other Bureau of Land Management (BLM) offices listed below (see §1821.2-1(d) of this title), the appellant shall serve the appropriate Regional or Field Solicitor as identified:

(i) BLM Alaska State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Alaska Region, U.S. Department of the Interior, 701 C Street, Box 34, Anchorage, AK 99513;

(ii) BLM Arizona State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, 505 North Second Street, Suite 150, Phoenix, AZ 85004-3904;

(iii) BLM California State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890;

(iv) BLM Colorado State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225;

(v) BLM Eastern States Office, including all District and Area Offices within its area of jurisdiction:

Associate Solicitor, Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240;

(vi) BLM Idaho State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, Federal Building, U.S. Courthouse, 550 West Fort Street, Box 620, Boise, ID 83724;

(vii) BLM Montana State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107-1394;

(viii) BLM Nevada State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890;

(ix) BLM New Mexico State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, MN 87504-1042;

(x) BLM Oregon State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, Lloyd 500 Building, Suite 607, 500 N.E. Multnomah Street, Portland, OR 97232;

(xi) BLM Utah State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Intermountain Region, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138-1180;

(xii) BLM Wyoming State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225;

(3) If the appeal is taken from the decision of an administrative law judge, the appellant shall serve the attorney from the Office of the Solicitor who represented the Bureau of Land Management or the Minerals Management Service at the hearing or, in the absence of a hearing, who was served with a copy of the decision by the administrative law judge. If the hearing involved a mining claim on national forest land, the appellant shall serve the attorney from the Office of General Counsel, U.S. Department of Agriculture, who represented the U.S. Forest Service at the hearing or, in the absence of a hearing, who was served with a copy of the decision by the administrative law judge.

(4) Parties shall serve the Office of the Solicitor as identified in this paragraph until such time that a particular attorney of the Office of the Solicitor files and serves a Notice of Appearance or Substitution of Counsel. Thereafter, parties shall serve the Office of the Solicitor as indicated by the Notice of Appearance or Substitution of Counsel.

(d) Proof of such service as required by §4.401(c) must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203), within 15 days after service unless filed with the notice of appeal.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL . . . . Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.
2. WHERE TO FILE  
NOTICE OF APPEAL . . . . Utah State Director  
Bureau of Land Management  
Utah State Office  
P.O. Box 45155  
Salt Lake City, Utah 84145-0155  
  
SOLICITOR  
ALSO COPY TO . . . . Regional Solicitor  
Department of Interior  
Federal Building, Room 6201  
Salt Lake City, Utah 84138
3. STATEMENT OF REASONS . . Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.  
  
SOLICITOR  
ALSO COPY TO . . . . Regional Solicitor  
Department of Interior  
Federal Building, Room 6201  
Salt Lake City, Utah 84138
4. ADVERSE PARTIES . . . . Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE . . . . Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))

5. WHEREAS the principal agrees that in the event of any default under the plan of operations, the United States, through the BLM, may commence and prosecute any claim, suit, or other proceeding against the principal, without the necessity of joining the owner(s) of the mining claim(s), mill site(s), or tunnel site(s) covered by the plan of operations; and

6. WHEREAS if the principal fails to comply with any provisions of the plan of operations, and the noncompliance continues for 30 days after written notice thereof, such plan of operations shall be subject to suspension or cancellation under Section 302(c) of the Federal Land Policy and Management Act, as amended [43 USC 1732(c)], and the principal shall also be subject to the applicable provisions and penalties of Sections 303 and 305 of the Federal Land Policy and Management Act of 1976, as amended (43 USC 1733 and 1735). This provision shall not be construed to prevent the exercise by the United States of any other legal and equitable remedy, including waiver of the default.

7. WHEREAS, on the faith of the foregoing promises, representations, and appointments and in consideration of this bond, the United States has approved the plan of operations referenced herein.

8. NOW, THEREFORE, the condition of this obligation is such that if said principal(s), his/her heirs, executors, administrators, successors, or assigns shall, in all respects, faithfully comply with all of the provisions of the plan of operations referenced herein, any amendments thereto, and the rules and regulations contained in 43 CFR Subpart 3809, then this obligation is void; otherwise it shall remain in full force and effect.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, in the presence of:

\_\_\_\_\_  
Name and Address of Witness

\_\_\_\_\_  
Principal (Seal)

\_\_\_\_\_  
Name and Address of Witness

By: \_\_\_\_\_  
(Name & Title Typed)

Business Address: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Name and Address of Witness

\_\_\_\_\_  
Surety (Seal)

\_\_\_\_\_  
Name and Address of Witness

By: \_\_\_\_\_  
(Name & Title Typed)

Business Address: \_\_\_\_\_

Signature: \_\_\_\_\_